

## Cooperation in Marriage-Related Legislation

Catholic politicians and lawyers find themselves quite often in perplexing and demanding situations when they come to take decisions in their conscience on issues of marriage-related legislation in parliament and in the law courts. They often find themselves wondering amidst a host of complex ethical issues which may have moral implications related to cooperation in evil. For example, how should a Catholic politician vote when a law to introduce divorce, civil union or gay marriage is presented for voting in parliament? Is there a moral distinction for a Catholic parliamentarian voting for civil union between homosexual couples and gay marriage? Should a lawyer represent a client seeking a civil divorce? How should a Catholic politician vote in parliament on a legislation regulating reproductive technologies? Can a judge's or a parliamentarian's faith prevent them from applying the law faithfully or supporting a new legislation to avoid complicity in evil? These questions are just a small sampling of the myriad of moral dilemmas lawyers and politicians face throughout their professional careers.

These thorny questions would have never emerged had there been little conflict between Catholic teaching on marriage and contemporary civil law. But today we are living in pluralistic, multicultural, liberal and secular societies where Catholic teaching conflicts with civil law in a host of marriage-related issues. The Church, for example, teaches that homosexual conduct is wrong; contemporary law protects gay relationships. The Church teaches that marriage is permanent; almost all countries have introduced divorce law and consider marriage as basically an at-will contract. The Church teaches that procreation should be the

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result of a natural conjugal sexual act. Laws regulating assisted procreation have been introduced in many countries.

Catholic politicians and lawyers need practical moral guidance on how to vote in parliament or how to apply the law in courts in accordance with the teachings of the Catholic Church. The political community has become less homogenous in its values and more pluralistic in its vision on marriage-related issues. If parliament and the law courts serve the whole community, should a particular set of values be imposed on the rest of the community? Which moral reasoning should Catholic politicians and lawyers follow for resolving their ethical dilemmas? A conscientious Catholic lawyer, judge or politician needs guidance on how to resolve fundamental moral conflicts between law and moral judgement.

This article will first explore the basic tool, namely the doctrine of cooperation in evil that Catholic moral theology offers to handle situations where the moral view of politicians or judges conflicts with the legal or political exigencies. Cooperation in an unjust law is an area most likely to cause anxiety, as an unduly rigorist approach may lead to someone unnecessarily forfeiting his/her job, career or peace of mind. This will be followed by a particular case study involving cooperation in a contentious issue which emerged during my experience as a member of the *European Group of Ethics in Science and New Technologies* (EGE), which is a pluralistic, interdisciplinary and independent advisory body to the European Commission. This case study will be discussed because of its relevance to the thorny and complex moral question under discussion. The case study made me realize that the traditional Catholic casuistry about cooperation in wrongdoing needs to be amply re-evaluated if it is to remain an appropriate tool for adequately resolving conflict situations in today's pluralistic, multicultural, liberal and secular societies. Finally, three specific case studies involving cooperation in controversial issues of marriage-related legislation, faced recently by Maltese politicians, will be discussed in the light of the practical wisdom, new insights and boarder horizon acquired through my EGE experience. However, since the doctrine of conscience plays a crucial role in the politician's or lawyer's decision-making process in cases of cooperation in evil, I shall start by discussing this moral issue.

## **The Role of Conscience**

Catholic politicians and lawyers who are serving society, the common good, the justice system and clients, have a moral obligation to take their parliamentary or court decisions in accordance with the Church's moral teachings. The ethical

quandaries which confront politicians and lawyers can only be resolved by resorting to one's moral compass, namely one's well informed and properly formed conscience which assists politicians and lawyers in finding the objective truth which serves as a guide through complex ethical issues involving cooperation in unjust laws. The ultimate goal of a properly formed conscience is to choose good and avoid evil. In the final analysis, a Catholic lawyer and politician must properly form their conscience and obey its direction.<sup>1</sup> This perspective should not be misunderstood as leading to relativism. On the contrary, it insists that there is such a thing as objective moral truth, that it is the task of reason to find it, and that as Aquinas put it, "the will is bound to follow reason, right or wrong."<sup>2</sup>

Catholics have a serious and lifelong obligation to form their consciences in accord with human reason and the teaching of the Church. Conscience is not something that allows us to justify doing whatever we want, nor is it a mere "feeling" about what we should or should not do. Rather, conscience is the voice of God resounding in the human heart, revealing the truth to us and calling us to do what is good while shunning what is evil. Conscience always requires serious attempts to make sound moral judgments based on the truths of our faith. As stated in the *Catechism of the Catholic Church*, "conscience is a judgment of reason whereby the human person recognizes the moral quality of a concrete act that he is going to perform, is in the process of performing, or has already completed. In all he says and does, man is obliged to follow faithfully what he knows to be just and right."<sup>3</sup>

The passing of unjust laws often raises difficult problems of conscience for morally upright people with regard to the issue of cooperation, since they have a right to demand not to be forced to take part in morally evil actions. Conscience plays a very important role when one is faced with a conflict situation wherein, although evil is not directly intended, some form of unintended evil which is unavoidable, has to be tolerated for a proportionate reason due to particular circumstances. Thus, conscience is crucial in the applicability of the principle of cooperation which addresses perplexing situations in which the pursuit of some good may well involve the toleration of evil. However, moral agents must be truly reluctant to do something that requires the toleration of evil. Obviously, neither principle should be employed as a method to rationalize participation in evil. Conscience is needed to reach a prudential moral judgment to distinguish

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<sup>1</sup> Robert J. Muise, "Professional Responsibility for Catholic Lawyers: The Judgment of Conscience," *Notre Dame Law Review* 71, no. 4 (1996): 774-780.

<sup>2</sup> "Quod omnis voluntas discordans a ratione, sive recta sive errante, semper est mala," *Summa Theologiae* (STh) I-II 19.5c.

<sup>3</sup> *Catechism of the Catholic Church*, no. 1778.

cooperation that is the same as doing evil from cooperation that demonstrates a toleration of evil necessitated by an obligation to pursue some proportionate good that cannot otherwise be reasonably achieved.

The role of conscience in cooperation faced by persons engaged in public life has been clearly expressed by John F. Kennedy when he was a candidate for the American presidency and spoke to the Greater Houston Ministerial Association in September of 1960. He unequivocally remarked as follows: "I do not speak for my Church on public matters and the Church does not speak for me." In an often overlooked paragraph immediately following this quotation from Kennedy's famous speech, he stated: "But if the time should ever come - and I do not concede any conflict to be remotely possible - when my office would require me to either violate my conscience or violate the national interest, then I would resign the office; and I hope that any conscientious public servant would do likewise."<sup>4</sup>

The fundamental conflict between the demands of morality and the demands of civil law continuously confronts politicians or lawyers in their service for the common good. A public official, including a Catholic public official, should generally exercise official duties faithfully, but if a choice must be made between official duties and conscience, then the official duties must be given up. In his encyclical letter *Evangelium Vitae*, St John Paul II wrote that "sometimes the choices which have to be made are difficult; they may require the sacrifice of prestigious professional positions or the relinquishing of reasonable hopes of career advancement. In other cases, it can happen that carrying out certain actions, which are provided for by legislation that overall is unjust, but which in themselves are indifferent, or even positive, can serve to protect human lives under threat."<sup>5</sup> One must never comply with any legislation that runs counter to one's well-informed conscience. The doctrine of cooperation is the basic tool offered by Catholic moral theology to lawyers and politicians to handle situations where their conscience is in conflict with the legal interpretation or political exigency.<sup>6</sup>

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<sup>4</sup> John F. Kennedy, "Address to the Greater Houston Ministerial Association (Sept. 12, 1960)," <http://www.americanrhetoric.com/speeches/jfkhoustonministers.html>.

<sup>5</sup> St John Paul II, *Encyclical Letter "Evangelium Vitae": On the Value and Inviolability of Human Life* (1995), no. 74.

<sup>6</sup> Edward Hartnett, "Catholic Judges and Cooperation in Sin," *University of St Thomas Journal* 4, no.2 (2006): 223-225.

## Role Morality

Some suggest that in conflict situations politicians and lawyers should ignore their conscience and follow a “role morality,” namely, an amoral role when voting in parliament or when applying legislation to concrete cases.<sup>7</sup> They claim that morality has to do with private life and for this reason it should be kept out from professional and political practice. It is important to address role morality because of its current popularity in the fields of law and politics. These people claim that Catholic politicians and lawyers cannot check their faith at the parliament or courtroom door. A lawyer’s or politician’s personal views of morality should have very little, if any, influence on the services they render to society. These two professions are at the service of others; they should be dedicated to the public good of the State.<sup>8</sup> In an amoral perspective in public life, the doctrine of cooperation completely loses its relevance and importance since the politician and the lawyer should comply with the legal or political exigencies rather than follow their conscience. Since Catholics are always obliged to follow their conscience, this amoral perspective is morally untenable.

Professor Stephen L. Pepper describes the amoral role of the lawyer as follows: “The traditional view is that if such conduct by the lawyer is lawful, then it is morally justifiable, even if the same conduct by the layperson is morally unacceptable and even if the client’s goals or means are morally unacceptable. As long as what a lawyer does is lawful, it is the client who is morally accountable, not the lawyer.”<sup>9</sup> The underlying moral concepts brought to support the amoral role are autonomy and equity. It is claimed that law is a public good intended to increase autonomy, and since increasing autonomy is morally good, access to already existing laws or the enactment of new laws is morally justified as long as they safeguard autonomy and equity. Since the amoral theory exalts autonomy above the objective good, it does not accept a conscientious objection position. Moreover, the politician cannot decide in conscience not to cooperate in the parliamentary approval of a new legislation which enhances autonomy. Nor should a judge or a lawyer ever decide in conscience to refrain from applying legislation requested by a client because the duties of the legal profession in support of autonomy prevail over his/her moral convictions.

The amoral ethical theory poses two principal problems for the Catholic lawyer and politician. First, this theory exalts autonomy above the objective

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<sup>7</sup> Stephen L. Pepper, “The Lawyer’s Amoral Ethical Role: A Defence, a Problem, and some Possibilities,” *American Bar Foundation Research Journal* 11, no.4 (1986): 613-615.

<sup>8</sup> Muise, “Professional Responsibility for Catholic Lawyers,” 790-798.

<sup>9</sup> Pepper, “The lawyer’s Amoral Ethical Role,” 613

good. The *moral* object of individual autonomy or free choice is greater than the object of the choice. According to Pepper's theory, one could reason that if a man chooses to divorce his wife in a no-fault divorce jurisdiction for no other reason than his desire to have a younger and more attractive mate, the lawyer who refuses to facilitate the intended adultery would not be a "good person" because he would be limiting access to the law through his/her moral screen. Secondly, the amoral ethical theory mistakenly frees a lawyer or politician from any measure of accountability for assisting his/her client's immorality or for voting in favour of an immoral law. As shall be discussed in the next section, all formal cooperation with evil is immoral. As St John Paul II stated, "this cooperation can never be justified either by invoking respect for the freedom of others or by appealing to the fact that civil law permits it or requires it."<sup>10</sup> A conscientious lawyer or politician cannot therefore assume an amoral role in public duties.

### Doctrine of Cooperation

Since we live in an imperfect world, it is inevitable that from time to time we get involved in cooperation in evil. Indeed, sometimes it is our duty to do so. To avoid all cooperation in evil would require that we abandon almost all areas of human activity. The traditional concept of material versus formal cooperation with evil is a way of distinguishing types of complicity in certain evil acts.<sup>11</sup> Formal cooperation occurs when a politician or legislator shares the sinful intention and wilfully agrees with the harmful consequences intended in legislation, and actively supports or applies the permissive law or even blocks someone else's restrictions to such law or bill. Material cooperation occurs when one tolerates legislation without sharing in its sinful intention while attempting to limit, as much as possible, the harm done by that law or bill. Catholics are "called upon under grave obligation of conscience not to cooperate formally in practices which, even if permitted by civil legislation, are contrary to God's law."<sup>12</sup> Catholics have a responsibility for the evil acts and harmful consequences implied in legislative processes when they "cooperate in them: by participating directly and voluntarily in them; by ordering, advising, praising or approving them; by not disclosing or not hindering them when [they] have an obligation to do so; [and] by protecting evil-doers."<sup>13</sup> Scholastic theology subdivided

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<sup>10</sup> *Evangelium Vitae*, no.74.

<sup>11</sup> Germain Gabriel Grisez, *The Way of the Lord Jesus: Difficult Moral Questions* (Chicago, Ill: Franciscan Press, 1997), 871-897.

<sup>12</sup> *Evangelium Vitae*, no.74.

<sup>13</sup> *Catechism of the Catholic Church*, no.1868.



material cooperation into “explicit” and “implicit,” “immediate” and “mediate,” “proximate” and “remote.”<sup>14</sup>

Under the doctrine of cooperation, a politician or lawyer may never formally cooperate in the approval of a sinful legislation or its application, but may, in some situations, materially cooperate in it for a proportionate reason in certain circumstances. The doctrine is by no means limited to judges, lawyers and politicians but rather addresses the wide range of situations in which one person helps another to sin. And in an interdependent and sinful world, much of what we do helps others to sin in some way. James F. Keenan has suggested that the doctrine of cooperation “can serve as a paradigm for the modern Christian who seeks to make the world a better place by neither compromising values nor detaching oneself from a world ridden with complexities.”<sup>15</sup> The challenge of the Catholic politician and lawyer is to discern in conscience to what extent cooperation is morally permissible for the common good without compromising his/her values in a world which today has become more and more complicated and complex than before.

St John Paul II emphasized the importance of the doctrine of cooperation in connection with unjust laws as follows:

The passing of unjust laws often raises difficult problems of conscience for morally upright people with regard to the issue of cooperation, since they have a right to demand not to be forced to take part in morally evil actions. Sometimes the choices which have to be made are difficult; they may require the sacrifice of prestigious professional positions or the relinquishing of reasonable hopes of career advancement. In other cases, it can happen that carrying out certain actions, which are provided for by legislation that overall is unjust, but which in themselves are indifferent, or even positive, can serve to protect human lives under threat. There may be reason to fear, however, that willingness to carry out such actions will not only cause scandal and weaken the necessary opposition to attacks on life, but will gradually lead to further capitulation to a mentality of permissiveness.

In order to shed light on this difficult question, it is necessary to recall the general principles concerning cooperation in evil actions. Christians, like all people of good will, are called upon under grave obligation of conscience not to cooperate formally in practices which, even if permitted by civil legislation, are contrary to God’s law. Indeed, from the moral standpoint, it is never licit to cooperate

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<sup>14</sup> See Anthony Fisher, “Cooperation in Evil: Understanding the Issue,” in *Cooperation, Complicity and Conscience*, ed. Helen Watt (London: The Linacre Centre, 2005), 30-32.

<sup>15</sup> James F. Keenan, “Prophylactics, Toleration, and Cooperation: Contemporary Problems and Traditional Principles,” *International Philosophical Quarterly* 29, no.2 (1989): 218.

formally in evil. Such cooperation occurs when an action, either by its very nature or by the form it takes in a concrete situation, can be defined as a direct participation in an act against innocent human life or a sharing in the immoral intention of the person committing it.<sup>16</sup>

## Revisiting the Doctrine of Cooperation

This section focuses on one particular case study involving cooperation which I have experienced as member of the *European Group of Ethics in Science and New Technologies* (EGE) when we were compiling an Opinion<sup>17</sup> regarding the ethical review of research projects involving human embryonic stem cells in connection with the Seventh Framework Programme for Research and Technological Development (FP7). This experience made me realize that the traditional doctrine of cooperation, with all its subtle distinctions devised to resolve moral dilemmas in a much less complex world than today, needs to be adequately revisited in order to address today's gamut of ethical challenges emerging in our contemporary multicultural, pluralistic, liberal and secular society.

For research projects involving human embryonic stem cells, FP7 requires an "ethical review" not only on a national level (according to national laws), but also on a EU level. In view of this "ethical review," the President of the European Commission had requested the EGE to prepare an Opinion setting out "ethical guidelines for research projects involving human embryonic stem cells" in the context of FP7.

Participation in the discussions on Opinion no.22 was a revealing experience to me and to a few other colleagues on how cooperation with others in a morally contentious issue is morally plausible as long as one's ethical standards are not compromised. Although this case implied cooperation with others to raise the level of ethical standards of an evaluative system already in force, the moral reasoning assumed in this particular context could also be followed, *mutatis mutandis*, in other cases of cooperation in an unjust law submitted for approval for the first time ever in a legislative assembly.

According to EU policy, each proposal to use human embryonic stem cells must successfully pass a scientific evaluation. Proposals which successfully pass

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<sup>16</sup> *Evangelium Vitae*, no.74. See Angel Rodriguez Luno, "Evangelium Vitae 73: The Catholic Lawmaker and the Problem of a Seriously Unjust Law," *Osservatore Romano*, September 18, 2002, <http://www.priestsforlife.org/library/1241-evangelium-vitae-73-the-catholic-lawmaker-and-the-problem-of-a-seriously-unjust-law>.

<sup>17</sup> European Commission, "Opinion no.22 on *Recommendations on the Ethical Review of hESC FP7 research projects*, June 2007."



this scientific evaluation are then subject to a stringent ethical review organized by the European Commission. The objective of the ethical review is to ensure that the European Union does not support research that would not comply with fundamental ethical principles,<sup>18</sup> and to examine whether the ethical rules set out in FP7 are met. In fact, Opinion no.22 explicitly states that “ethically responsible research involving human embryonic stem cells must comply with fundamental ethical principles and human rights in the European Union, from the procurement of stem cells to clinical research based on hESCs.”<sup>19</sup> However, the crucial issue is how the fundamental ethical principle of human dignity, which is the basis of human rights, is to be interpreted and applied.

The small group of EGE members who had ethical objections to the use of embryonic stem cells in scientific research had two options of cooperation: either to oppose the opinion and to submit a dissenting opinion, *or* to work within the EGE with the aim of introducing as many ethical requirements as possible in order to minimise the number of research projects with human embryonic stem cells eligible for EU-funding. These group members argued that if they chose the first alternative, their dissenting opinion would be easily sidelined. Moreover, as a consequence of choosing this option, they would miss the opportunity of influencing, throughout the entire process of intensive discussions, the ethical guidelines for FP7 for the better. Therefore, after thorough reflection and long discussions among themselves, those members who were contrary, on ethical grounds, to hESCs opted to follow the second alternative.

They insisted on the inclusion in the Opinion that, “as is the case in the European Union, there are divergent views within the EGE on the moral legitimacy of research on human embryos and hESCs, ranging from objection to research involving the destruction of human embryos (which makes the full respect of dignity of the human embryo impossible), to a position allowing hESC research under certain conditions or on a broader basis.”<sup>20</sup> This unequivocal assertion has been endorsed in Opinion no.22 since some members of the Group had declared at the outset of the discussions that they had fundamental ethical objections to the use of embryonic stem cells in scientific research. They also

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<sup>18</sup> European Commission, Seventh Framework Programme (Decision no.1982/2006/EC), Article 6(1): “All the research activities carried out under the Seventh Framework Programme shall be carried out in compliance with fundamental ethical principles.” Rules for Participation, Article 10: “A proposal ... which contravenes fundamental ethical principles ... shall not be selected. Such a proposal may be excluded from the evaluation and selection procedures at any time.”

<sup>19</sup> Opinion no 22, par. 4.2.1.

<sup>20</sup> Ibid., par. 4.1.

underlined that they were not ready to make any *ethical* compromise on this issue because any use of human embryonic stem cells in medical research involves the destruction of human life and accordingly is against the ethical principles of the dignity and the inviolability of a human being who must be respected and protected at all stages of its development.

They insisted that they were cooperating in the drafting of this Opinion since the EGE had neither the mandate nor the power to change the political co-decision already taken by the EU on the funding of research projects involving human embryonic stem cells. Their cooperation constituted a *political* and not an *ethical* compromise. Active participation in the discussions and cooperation in the drafting of the Opinion constituted the best possible decision taken in those particular circumstances for a proportionate reason, given that their intention was harm-reduction and the avoidance of scandal.

Thus, rather than presenting a dissenting opinion, they advanced strong scientific and ethical arguments, to be included in the Opinion, that would make it more difficult for these research projects to be accepted by the ethics review board. In other words, the main objective of their strategy was to include in Opinion no.22 standards as high as possible so as to make it more and more difficult for these research projects to be accepted for funding under FP7. In fact, in comparison to FP6, more stringent rules of selection procedure were introduced as a result of this strategy consisting of convincing scientific, legal and ethical arguments in support of the dignity and integrity of every human being from the moment of fertilisation.

This moral reasoning resembles the line of thought expounded in the encyclical letter *Evangelium Vitae*<sup>21</sup> which states that when it is not possible to overturn a contentious law or public policy, it is morally licit to present or support proposals aiming at limiting the harm done by such policies or laws. Such a political (not ethical) compromise does not represent an illicit cooperation with an unjust policy, but rather a legitimate and proper attempt to limit the evil aspects of EU policy on the funding of research projects involving human embryonic stem cells.

### **Cooperation: The Maltese Experience**

The following sections will focus on three specific cases of cooperation which faced Maltese politicians in instances of controversial marriage-related legislation presented in parliament for the first time during the past five years.

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<sup>21</sup> *Evangelium Vitae*, no.73

In July 2011, Malta's House of Representatives voted to legalize divorce,<sup>22</sup> following a May 2011 referendum which had 52.67% of voters in favour and 46.4% against. In parliament, out of sixty-five representatives, only eleven voted against and five abstained. Then in November 2012, Malta's House of Representatives approved the *Embryo Protection Bill*<sup>23</sup> which regulates medically assisted procreation, the subject of debate for many years. Less than two years later, in April 2014, the *Civil Unions Bill*<sup>24</sup> was approved by parliament in its third and final reading, with all government MPs present voting in favour of the bill while all opposition MPs abstained. The bill granted same-sex couples with the opportunity to enter legally-recognized civil unions, an arrangement which is effectively equivalent to marriage in all but name. But while there was a political consensus on introducing civil unions, this was lacking on another, more controversial, provision of the law, namely that of allowing same-sex couples to jointly apply to adopt children.

Were those politicians who, in conscience, voted in favour of these controversial bills which were presented in parliament for the first time ever, cooperating in unjust laws and is their action consequently morally illicit? Is there any distinction in moral appraisal between voting for a legislation submitted in parliament for the first time ever to amend an existing law which is considered as unjust, and voting in favour of a new law, which is considered as morally contentious? Are there circumstances and intentions which render this distinction more subtle and difficult to articulate in today's complex world, and consequently more difficult to sustain and defend? Can voting in favour of an unjust law presented in parliament for the first time ever be justified as material cooperation, as long as one is convinced in conscience that there is a proportionate reason to tolerate an imperfect legislation which cannot be abolished, the intent is to limit harm, and due measures are taken to avoid causing scandal? Should the Thomistic and neo-Scholastic moral reasoning underpinning the doctrine of cooperation be reinterpreted and revaluated in the light of a broader horizon of meaning to distinguish more adequately the moral difference between the justness and unjustness of laws, "permitting" and "tolerating" the harm of a particular law, and the intent of the law and the intent of the legislator in order to render this traditional moral principle more fitting to today's multicultural, pluralistic,

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<sup>22</sup> "Divorce - Adaption of Various Laws Order, 2012," <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23431&l=1>.

<sup>23</sup> "The Embryo Protection Act, 2012," <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=24269&l=1>.

<sup>24</sup> "The Civil Unions Act, 2013," <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25586&l=1>.

liberal and secular political communities? Should not the politicians' conscience be given more weight in these thorny decisions?

### *Divorce Law*

Until October 2011 there was no domestic divorce law in Malta, although the validity of divorce obtained overseas had been recognized since 1975. Malta and the Philippines were, in fact, the only two countries in the world which did not have divorce legislation. In Malta, the Catholic religion enjoys special status in virtue of Article 2 of the Constitution of the Republic which states that:

(1) The religion of Malta is the Roman Catholic Apostolic Religion. (2) The authorities of the Roman Catholic Apostolic Church have the duty and the right to teach which principles are right and which are wrong. (3) Religious teaching of the Roman Catholic Apostolic Faith shall be provided in all state schools as part of compulsory education.<sup>25</sup>

Some months before the 2011 May referendum on divorce, a declaration released in October 2010 by a group of theologians to defend people's right to reach a decision in conscience was approved publicly *post factum* by the Archbishop.<sup>26</sup> This position was taken in response to the arguments of some Church people who claimed that those who vote for the introduction of divorce in the referendum would commit a sin. In other words, they claimed that voting in favour of a divorce law constituted a formal cooperation in an unjust law. The declaration was meant to throw light on the moral responsibility of every Maltese citizen to properly form their conscience and to take seriously into consideration the common good of society when taking a position on divorce legislation. The declaration stated clearly that the Catholic who, without caring about having an informed and formed conscience, decides to follow one's whim, without seriously paying attention to the teaching of God's Word and of the Church, but only follows one's feelings, one's own thoughts or personal advantage - if not also one's prejudices - should realize that he/she is not doing one's duty as a Catholic. One is responsible for such action before God and may possibly be sinning.

However, the statement continues that, after trying seriously to form one's conscience according to God's Word and the teaching of the Church and trying

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<sup>25</sup> "The Constitution of Malta," <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566>.

<sup>26</sup> "Declaration about Conscience and Divorce," *Times of Malta*, October 10, 2010, <http://www.timesofmalta.com/articles/view/20101013/local/influential-priests-to-issue-position-paper-on-divorce.331054>.

sincerely to discover the whole truth and what really leads to the common good, a Catholic:

- a) may either reach a right decision or may also in all sincerity reach a decision which, in itself, is mistaken. But whatever the case, one is always obliged to follow and decide according to one's conscience;
- b) may still, in spite of having all the necessary knowledge and having done everything to find the whole truth, in conscience remain unconvinced with the arguments brought against voting for a legislation favouring divorce. This one too has the right and the duty to follow one's conscience;
- c) may also see that in this matter one is faced by the choice between two situations which in themselves are both harmful to the common good. It is legitimate, in this case of conflict, for one to choose the lesser evil after prayer, reflection and sincere search for the whole truth.<sup>27</sup>

The Catechism of the Catholic Church speaks clearly about the evil of divorce since “it is a grave offence against natural law.”<sup>28</sup> This means that participation in favour of the introduction of a divorce law by voting in a referendum may constitute a case of formal cooperation. For this reason, the declaration was important and timely to enlighten citizens' conscience to be well informed in order to take the right decision in their own conscience. A Catholic, who does not have any shred of doubt about the indissolubility of marriage, may decide to vote in favour of the introduction of the divorce law in a referendum because he/she may be convinced in conscience that the introduction of such legislation would (a) strengthen the marriage union of those couples who cohabit; (b) protect the vulnerable persons in these relationship; and (c) provide more stability to children. Would such decision constitute material or formal cooperation? Do these arguments constitute a proportionate reason to decide in conscience to vote in favour of the introduction of divorce legislation as long as efforts are done to limit as much as possible the possible harms as a result of the proposed law and to avoid causing scandal?

Following the May 2011 referendum with a 53% of voters approving of divorce legislation, the moral issue was raised concerning how Catholic parliamentarians should now vote when the legislation would be presented in parliament for approval. Politicians do not only have a fundamental human right to decide according to their conscience, but they have a fundamental duty to do so. Evidently, a politician has to inform and form his/her conscience. As a

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<sup>27</sup> Ibid. Following this declaration the Maltese bishops sent instructions to confessors giving an opposite interpretation of the issue. Catholic politicians thus had two conflicting positions both approved by the archbishop.

<sup>28</sup> Catechism of the Catholic Church, no.2384.

representative of the people, a member of parliament cannot disregard popular opinion. When such an opinion is sanctioned by a referendum vote, it gains more validity.

Local parliamentarians were faced with a number of options in their conscience on how to vote in parliament on the referendum result. An MP who has a principled objection to divorce legislation may legitimately (morally and politically) decide to vote no. Such a right should be considered as elementary in a democracy. In a civilized and democratic society members of parliament have the right to conscientious objection to dissent. However, an MP who was against the introduction of divorce before the referendum may also arrive at a legitimate decision in conscience to abstain or to vote in favour. Deciding to abstain or vote in favour of the bill in parliament may constitute a hard decision for a Catholic politician who, before the referendum, was convinced in conscience and had campaigned against the introduction of divorce. There might be moral uneasiness that abstaining or voting in favour of a divorce legislation would be perceived as an ethical compromise and consequently cause scandal to those who voted against. This moral reasoning needs to be properly evaluated.

One may claim that there are sound moral arguments which support a politician's contentious and legitimate decision to vote in favour of divorce after such legislation has been approved by a referendum decision. A Catholic politician may come to terms with the democratic decision taken in a referendum that the ideal of indissoluble marriage cannot now be legally guaranteed. Hence, the politician may decide in conscience to contribute as much as possible towards the improvement of the imperfect draft law by making it more restrictive in order to limit the harm of divorce. The protection of the institution of marriage may be fulfilled by a Catholic politician throughout parliamentary discussions at committee stage, thereby striving to ensure the best possible "deal" in the circumstances. Since the decision to participate actively in the parliamentary debates does in fact entail a political compromise rather than an ethical compromise, the kind of cooperation involved may be considered material rather than formal.

This moral quandary concerning cooperation in the contentious divorce legislation is analogous to the experience faced by the small group of members within the EGE as discussed in the previous section. In order to avoid the risk of scandal, a Catholic politician should also declare publically that he/she is voting in favour of the divorce legislation not because he/she had changed his/her views on the indissolubility of marriage, but rather to respect the democratic process. He/she should also make known to the general public his/her efforts to improve the draft legislation in order to limit as much as possible the harm



of the divorce mentality. This moral reasoning is in line with *Evangelium Vitae* which discusses the position of the Catholic politician when faced by abortion legislation, a situation far worse and more complex than the divorce legislation. In *Evangelium Vitae* we find that an elected official “could licitly support proposals aimed at limiting the harm done by such a law, and at lessening its negative consequences at the level of general opinion and public morality. This does not in fact represent an illicit cooperation with an unjust law, but rather a legitimate and proper attempt to limit its evil aspects.”<sup>29</sup> In the case of the Maltese divorce legislation, Catholic politicians were not faced with a law which was already in force but with a referendum decision which had to be developed into a law.

Another moral issue related to cooperation in the area of divorce legislation is when a Catholic lawyer is requested to represent a client seeking a civil divorce. Suppose that the client and his wife were married in the Catholic Church. According to the Catholic faith, the sacrament of marriage is indissoluble. Should the Catholic lawyer agree to represent this client? Is this a meritorious claim? If so, how should the lawyer advise the client? The lawyer’s properly formed conscience calls him/her to do good and to avoid evil; this is also the first precept of natural moral law. The teachings of the Church offer guidance for the lawyer’s response to the posed questions.

The Church acknowledges that the physical separation of the married couple is necessary in some situations: “The *separation* of spouses while maintaining the marriage bond can be legitimate in certain cases provided for by canon law. If civil divorce remains the only possible way of ensuring certain legal rights, the care of the children, or the protection of inheritance, it can be tolerated and does not constitute a moral offense.”<sup>30</sup> In cases where living together is “practically impossible,” the Church permits the married couple to live apart. However, “the spouses do not cease to be husband and wife before God and so are not free to contract a new union.”<sup>31</sup> Therefore, in agreeing to assist his/her client in separating from his wife and obtaining a civil divorce the Catholic lawyer would be consistent with Church teaching if living together becomes practically impossible. However, if possible, the lawyer should advise the client to seek the better solution and reconcile with his wife. Furthermore, the lawyer could advise his/her client to seek counselling or spiritual assistance since the lawyer should not limit himself/herself to a purely legal solution.

While the Church recognizes that some situations do exist where a married couple should be separated physically, the Church also clearly states that if the

<sup>29</sup> *Evangelium Vitae*, no.73.

<sup>30</sup> *Catechism of the Catholic Church*, no.1649.

<sup>31</sup> *Ibid.*

divorced couple is remarried civilly, they find themselves in a situation that objectively contravenes God's law. Thus, a lawyer who assists with a civil divorce for the purpose of facilitating the remarriage of his/her client, or who is aware that his/her client is seeking the divorce with the intent to remarry, would be cooperating formally. While the lawyer's actions may not constitute formal cooperation with the immoral act, he/she would be materially cooperating by helping to make the wrongdoing possible. Therefore, a lawyer may be morally culpable depending upon the object of his/her actions, his/her intentions, and the circumstances of his/her actions. If he/she knows that his/her actions would likely result in an immoral act, some argue that the lawyer should refuse to represent this client.<sup>32</sup>

### *IVF Law*

Debate on reproductive technologies has been going on in Malta since 1995. The issue of assisted procreation had featured many times on the agenda of the National Bioethics Committee, of which I have been a member since its inception in the early 1990s. Various reports, ethical guidelines, and two draft legislations on reproductive technologies have been submitted by to the Ministry of Health.

Although Malta was one of the few EU member states where assisted procreation was still unregulated, infertility clinics have been offering the service of IVF to infertile couples for more than two decades. Finally, the long-awaited legislation to regulate assisted procreation found its place on the parliamentary agenda. A draft *Embryo Protection Bill* was presented for public consultation in July 2012 and approved on November 26, 2012 after months of debate and discussions inside and outside parliament, as well as across the political divide.

Catholic politicians were faced with the moral dilemma whether to support or oppose such a bill since Catholic teaching disapproved reproductive technologies because they replace, rather than assist, the conjugal act.<sup>33</sup> Would voting in favour of this proposed legislation constitute formal cooperation in an unjust law since it was been presented for voting for the first time ever in parliament? Are there instances where a Catholic politician may reach a prudential judgment in conscience, due to justified and proportionate reasons, to vote in favour of a legislation regulating assisted procreation as long as reasonable measures are taken to limit harm, and genuine efforts are made to avoid scandal? Should

<sup>32</sup> Muise, "Professional Responsibility for Catholic Lawyers," 790.

<sup>33</sup> Congregation for the Doctrine of Faith, "*Donum Vitae*": *Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation; Replies to Certain Questions of the Day* (1987), section II, par.1.

reproductive technology remain an unregulated practice in a country, thereby remaining open to all possible biotechnological risks and abuses?

The Catholic Church's moral perspective on IVF is based on the respect of three fundamental goods that are considered as essential for human flourishing. First, the right to life and to physical integrity of every human being must be respected from conception to natural death. Secondly, the institution of marriage and the family must be safeguarded. Thirdly, the inseparable connection between the two meanings of the conjugal act, namely the unitive and the procreative meaning, is to be respected.

Malta's *Embryo Protection Bill* guaranteed full protection to the human embryo and specifically prohibited third party involvement. In fact, it permitted fertilization of a maximum of three embryos in order to avoid the contentious issue of supernumerary human embryos and consequently embryo freezing, except in those rare cases where this is necessary due to grave and certified *force majeure*.<sup>34</sup> A contentious aspect of the bill was the eligibility for IVF treatment of unmarried couples living in a stable relationship. We all know that relationships within marriage are themselves fragile. But the institutionalization of the relationship gives some kind of guarantee of certain stability. If stable relationships within couples seeking IVF treatment are in the best interest of the child, ethical arguments were raised as to whether access to these techniques should not be limited to married couples only, or to those whose relationship is at least institutionalized say through a civil union.<sup>35</sup>

In their Pastoral Letter<sup>36</sup> of 26 July 2012, the Maltese bishops rightly pleaded for a public policy on IVF since "it is... a well-known fact that where civil laws do not regulate the practice of IVF, there is great disorder." They also rightly maintain that "civil law in respect of assisted procreation should aim to safeguard the three values..., i.e. the value of life and physical integrity of every person, the value of the unitive aspect of marriage and the value of human sexuality in marriage." They also addressed legislators and politician as follows:

We feel that civil law in respect of assisted procreation should aim to safeguard the three values we have already mentioned, i.e. the value of life and physical integrity of every person, the value of the unitive aspect of marriage and the value

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<sup>34</sup> "Embryo Protection Act," <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=23499&l=1>.

<sup>35</sup> Emmanuel Agius, "Public Policy on IVF Issues," *The Times of Malta*, August 14, 2012, <http://www.timesofmalta.com/articles/view/20120814/opinion/Public-policy-in-IVF-issues.432808>.

<sup>36</sup> Maltese Episcopal Conference, "Celebrating Human Life," 26th July, 2012, <http://www.laikos.org/90%20ITTRA%20PASTORALI%20NICCELEBRAW%20IL-HAJJA%20ENG.pdf>.

of human sexuality in marriage. A law which does not safeguard these values is morally wrong. There are different levels of ethical gravity emanating out of a law that does not respect these values.

For this reason, men of goodwill who are responsible to draw up legislation are duty-bound in conscience to try and achieve the best possible benefits, or as far as possible, to mitigate dangers.<sup>37</sup>

The bishops' moral reasoning echoed faithfully the teaching of the magisterium as pronounced by the Congregation for the Doctrine of Faith in the "Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation: Replies to Certain Questions of the Day" (*Donum Vitae*), which goes even further to state that morality "must sometimes tolerate, for the sake of public order, things which it cannot forbid without a greater evil resulting."<sup>38</sup> Then, this authoritative document of the magisterium continues to explain which of the three fundamental goods cherished by morality cannot be traded off, namely: "(a) every human being's right to life and physical integrity from the moment of conception until death; (b) the rights of the family and of marriage as an institution and, in this area, the child's right to be conceived, brought into the world and brought up by his parents."<sup>39</sup> This was confirmed by Pope Benedict XVI, then cardinal-prefect of the Congregation for the Doctrine of Faith, in one of his dialogues with the Italian philosopher and politician Marcello Pera.<sup>40</sup>

It is interesting to note that the Maltese bishops referred to "different levels of ethical gravity emanating out of a law." This statement refers to the "hierarchy of truths" which is one of the most neglected themes of the Second Vatican Council.<sup>41</sup> In his interview with Antonio Spadaro, Pope Francis states that "the dogmatic and moral teachings of the Church are not all equivalent."<sup>42</sup> Does this perspective apply also to the three values outlined in the bishops' pastoral letter? This question is pertinent in relation to the principle of cooperation in

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<sup>37</sup> Ibid.

<sup>38</sup> *Donum Vitae*, section III.

<sup>39</sup> Ibid.

<sup>40</sup> Pope Benedict XVI, Marcello Pera and Michael Moore, *Without Roots: The West, Relativism, Christianity, Islam* (New York: Basic Books, 2006), 129-133. See also Emmanuel Agius, "Morality and Public Policy," *The Times of Malta*, October 28, 2010, <http://www.timesofmalta.com/articles/view/20120407/opinion/The-moral-and-civil-law-on-IVF.414406>.

<sup>41</sup> Vatican Council II, *Decree on Ecumenism*: "Unitatis Redintegratio," no.11.

<sup>42</sup> Antonio Spadaro, "The Church in a Synodal Journey," *America*, Nov 7, 2014, <http://americamagazine.org/church-synodal-journey>.

an imperfect law and how the politicians were to vote for the *Embryo Protection Bill* (2012).

Way back in 1990, this moral perspective on the “hierarchy of truths,” together with the distinction between morality and public policy, had inspired the Episcopal Conference of England and Wales in its reaction to the *Human Fertilisation and Embryology Act*,<sup>43</sup> which was publicly discussed at that time. In England and Wales, the bishops had declared that they “do not expect to have all Catholic moral theology imposed by law, or even adopted as public policy... The Catholic Church does not ask that the law of the land should coincide in every respect with the moral law.”<sup>44</sup>

The moral dilemma of Maltese Catholic parliamentarians was whether to vote in favour or against the proposed legislation. The draft bill gave full protection to the human embryo, but did not protect fully the institution of marriage since it permitted IVF treatment to non-married stable couples. In spite of this provision, Maltese Catholic parliamentarians decided in conscience to vote in favour of the *Embryo Protection Bill*, even though it was presented for voting for the first time ever. Many argued that they had shouldered their political and moral responsibility throughout the entire process of committee stages in parliament in order to amend the law in the light of the teaching of the Catholic Church. Moreover, they had stated in public that they would have preferred a law offering IVF treatment only to married couples in order to safeguard the institution of marriage and the interests of protecting children. However, they were convinced in conscience that there is a grave and proportionate reason to justify their support of the *Embryo Protection Bill* since Malta could not remain within a legal vacuum, exposed to becoming a hub of biotechnological experimentations and abuses. Their prudential judgement legitimately led them to conclude that it was better to have a legislation which, though morally imperfect, sets a clear regulatory framework in defence of human life at all stages of its development, and robustly restricts harm by prohibiting all kinds of abuses related to reproductive technologies.

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<sup>43</sup> “Human Fertilisation and Embryology Act 1990,” <http://www.legislation.gov.uk/ukpga/1990/37/contents>.

<sup>44</sup> Catholic Bishops’ Joint Committee on Bio-Ethical Issues, *In Vitro Fertilization: Morality and Public Policy: Evidence Submitted to the Government Committee of Inquiry into Human Fertilization and Embryology (the Warnock Committee) by the Catholic Bishops’ Joint Committee on Bio-Ethical Issues on behalf of the Catholic Bishops of Great Britain* (Godalming: Catholic Media Office, [1985?], 5; see also Agius, “Public Policy in IVF issues.”

*Civil Unions Law*

The introduction of a law on civil unions in the Maltese parliament in September 2013, granting to the LGBT community the same rights, responsibilities and obligations as marriage, including the right to adoption, was another thorny issue which irked a number of Catholic politicians on whether to vote in favour or against a contentious legislation which, from a Catholic perspective, was morally unacceptable. Since the *Civil Union Act* “equates civil unions with marriage, in terms of procedure and substance, in the manner that guarantees equal rights to the parties in a civil union as are granted to spouses in a marriage”, some argued that the title of the legislation was misleading and deceptive because the wording and substance of the law catered for the establishment of gay marriage in all but name.<sup>45</sup> Parliament gave final approval to the legislation on 14 April 2014 by a vote of thirty-seven in favour and thirty abstentions.

The Catholic Church opposed the law since it went beyond the civil union granting protection to heterosexual and homosexual couples from any form of discriminations to the recognition of gay marriage.<sup>46</sup> The Catholic Church teaches that the definition of marriage is much more than a matter of public opinion. Marriage and the family presuppose a biological datum which we need to recognize as part of our respect for our human nature. During the consultation process, the Church raised for public reflection and discussion among the civil and political community a number of fundamental questions regarding the legal redefinition of the intrinsic meaning of marriage. Should the institution of marriage be made to mean something radically different to what it has traditionally meant? Would this flattening of meaning in relation to a basic institution enrich the nature and quality of social life? Was not the institution of marriage and the family an important public good which required the legal protection of the State? Moreover, the Church objected to the granting of the right of gay couples to adopt children. Empirical data contrasting children reared in a marriage among heterosexual couples with those brought up in a gay relationship is still conflicting and inconclusive. In view of these knowledge gaps on the probable and uncertain risks on children, the Church asked whether it would be more prudent for society to adopt the precautionary principle in this domain.<sup>47</sup>

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<sup>45</sup> Emmanuel Agius, “Rights and Civil Union,” *Times of Malta*, October 24, 2013, <http://www.timesofmalta.com/articles/view/20131024/opinion/Rights-and-civil-unions.491675>.

<sup>46</sup> “Statement by the Maltese Bishops on Civil Union Bill, 16 Oct 2013,” <http://gozodiocese.org/wp-content/uploads/2013/10/113-bishops-statement-eng.pdf>.

<sup>47</sup> Ibid.



In its statement on the *Considerations regarding Proposals to give Legal Recognition to Unions between Homosexual Persons* (2003),<sup>48</sup> the Congregation for the Doctrine of Faith unequivocally states that “when legislation in favour of the recognition of homosexual unions is proposed for the first time in a legislative assembly, the Catholic law-maker has a moral duty to express his opposition clearly and publicly and to vote against it. To vote in favour of a law so harmful to the common good is gravely immoral.”<sup>49</sup> Following the same moral reasoning of the encyclical letter *Evangelium Vitae*<sup>50</sup>, it continues that

when legislation in favour of the recognition of homosexual unions is already in force, the Catholic politician must oppose it in the ways that are possible for him and make his opposition known; it is his duty to witness to the truth. If it is not possible to repeal such a law completely, the Catholic politician... could licitly support proposals aimed at limiting the harm done by such a law and at lessening its negative consequences at the level of general opinion and public morality,” on condition that his “absolute personal opposition” to such laws was clear and well known and that the danger of scandal was avoided. This does not mean that a more restrictive law in this area could be considered just or even acceptable; rather, it is a question of the legitimate and dutiful attempt to obtain at least the partial repeal of an unjust law when its total abrogation is not possible at the moment.<sup>51</sup>

The result of the parliamentary vote for *The Civil Unions Act* indicated the clear-cut division between Malta’s two leading political parties. All members of the party in Government voted in favour, whereas those belonging to the Opposition abstained on moral grounds. During public discussions before the vote in parliament, some members of parliament belonging to the latter group were convinced in conscience that voting for this legislation did not constitute formal but material cooperation. Material cooperation can sometimes be morally tolerated for a grave reason. The statement of the Congregation for the Doctrine of Faith makes it clear that “one must refrain from any kind of formal cooperation in the enactment or application of such gravely unjust laws and, as far as possible, from material cooperation on the

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<sup>48</sup> Congregation for the Doctrine of Faith, “Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons, June 3, 2003,” [http://www.vatican.va/roman\\_curia/congregations/cfaith/documents/rc\\_con\\_cfaith\\_doc\\_20030731\\_homosexual-unions\\_en.html](http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html).

<sup>49</sup> Ibid.

<sup>50</sup> *Evangelium Vitae*, no.73.

<sup>51</sup> Congregation for the Doctrine of Faith, “Considerations regarding Proposals to give Legal Recognition to Unions between Homosexual Persons.”

level of their application. In this area, everyone can exercise the right to conscientious objection.”<sup>52</sup>

Before discussing the moral dilemma faced by Opposition parliamentary members, the moral reasoning concerning the Catholic politician’s justification in conscience to vote for legislation regulating civil union needs to be discussed. The 2003 statement of the Congregation for the Doctrine of Faith explicitly prohibits Catholic politicians from voting for a law on civil union presented in parliament for the first time because this constitutes formal cooperation in evil. However, this moral position needs to be reevaluated in the light of the emerging historical and political circumstances and the moral consciousness and conscientiousness on the politician’s duty to foster a “culture of dignity.” For instance, in 1999 the Bishops’ Conference in France had vehemently opposed civil union. However, during the campaign for legislation on gay marriages in 2013, they endorsed an improved “Pact of Civil Solidarity” for homosexuals as an alternative to instituting gay marriage. In other words, they supported the strengthening of the legal recognition of homosexual relationships, while not going so far as to equate such unions with marriage. This shift in moral perspective moves away from the position defended in the 2003 statement of the Congregation for the Doctrine of Faith. One may argue that this paradigm shift in moral perspective was justified by the argument of the choice of the lesser evil. However, it seems that such argument is untenable, unconvincing and inconsistent. This shift towards the acceptance of civil union as a preferred legal recognition to gay marriage may be the result of the growing consciousness and conscientiousness that all persons and minority groups, irrespective of their colour, gender or sexual orientation, are to be recognized as belonging to the same moral and civic community as the majority, and accordingly legislation must be enforced to protect them from any form of discrimination. Moreover, the recognition of civil union needs to be perceived from the political community’s moral responsibility to foster a “culture of dignity” in which every citizen lives in an inclusive culture of recognition between human beings.

Therefore, as long as civil union is not equated to marriage, one may conclude that a Catholic politician is not cooperating formally in an unjust law when voting in favour of civil union, even when the legislation is being presented in parliament for the first time ever, since such a legislation is primarily intended to protect the dignity and rights of the LGBT community and to recognize its members as fellow humans and fellow citizens, people who belong to the same political community and to protect their dignity from discrimination. Where

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<sup>52</sup> Ibid.

they are inadequately protected, the law has to rectify that situation. In a law-governed society, stigmatization, unjust discrimination and marginalization are to be eradicated in order to promote a “culture of dignity.” To achieve this aim, many democratic societies have introduced civil unions to formalize and protect the rights and duties of same-sex relationships, particularly in situations of vulnerability.

The local Catholic politicians who were convinced in conscience that voting in favour of the *Civil Unions Act* did not constitute formal cooperation in an unjust law but rather material cooperation in an imperfect law argued that, since they had engaged themselves actively to improve the law both in public debates and in parliament throughout the entire process of discussion at the committee stages, and had submitted amendments to limit the negative effects of the legislation, their main intention of voting in favour was not to promote gay marriage or ideology but rather to foster a “culture of dignity” by protecting the LGBT community from any form of discrimination. They had presented amendments to distinguish and separate civil unions from marriage, rather than assimilating them with each other as the draft legislation did. Moreover, they had argued that the legislation should not include the gay couples’ right to apply for adoption in view of the knowledge gaps on the wellbeing of children.

Cooperation with a legislation to foster a “culture of dignity” does not mean approval of those elements which run counter to Church doctrine on marriage. In spite of their continuous efforts to improve the bill and to limit its negative consequences, the Opposition members of parliament did not succeed to make the law more restrictive since government had taken a foregone conclusion to go along with the wishes of the LGBT community and their ideology, and consequently government seemed to be politically determined not to budge on any article of the draft bill. In the absence of political good will to revise the proposed legislation, no amendments submitted by the civil society and the party in opposition were accepted by government. Members of the House of Representatives in opposition made every effort throughout the whole process of discussion to amend the draft legislation. However, no good will was reciprocated from the side of the party in government, which enjoyed an absolute majority, to accept the proposed amendments.

Another option for the parliamentary party in opposition was to give a free vote to its members. Were there grave political and moral reasons not to go for this option? A divided party in opposition in that particular historical context when this bill was being discussed in parliament may have continued to tarnish the credibility and weaken the unity of the party in opposition which was then recovering from a landslide defeat at the previous polls. The risk of projecting

a weak and divided party on such a sensitive issue to the general public may be considered as a proportionate reason for not going to the option of a free vote. Voting *en masse* against the bill was also politically untenable since a political party cannot be contrary to civil rights. For this reason the opposition party opted to take a common stand, namely abstention, due to the divergences of conflicting ethical positions among its parliamentary representatives. Maybe this was the best option in those circumstances. By abstaining the party in opposition wanted to convey the message that it was in agreement with the civil rights granted by the bill on civil union, but in disagreement with the civil union's equation with marriage and with the gay couples' right to adoption.

However, a considerable number of members of parliament in opposition were convinced in conscience that, given that a selective ban on certain contentious aspects of the proposed legislation was not politically feasible due to the absolute majority enjoyed by government, voting in favour of the bill did not constitute formal cooperation since they had done their best to amend the law in order to limit its harm and were prepared to explicate publicly, in order to prevent any confusion or scandal, that their main intent of tolerating an imperfect law was a political rather than an ethical compromise. They believed that they had a justified proportionate reason to vote in favour of the proposed imperfect legislation since their main intent was only to foster a "culture of dignity" by defending equality, justice, tolerance, protection of the vulnerable, and non-discrimination, which are fundamental principles in any democratic society.

## Concluding Reflections

For many centuries the principle of cooperation has served its purpose in assisting those who find themselves in ambiguous decisions and actions involving a mixture of good and evil consequences to reach a prudential judgement how to pursue and intend the good while permitting some form of unavoidable evil. Because of today's complexity of human activity, the traditional principle of cooperation, particularly in marriage-related legislation, needs to be understood from a broader horizon in order to resolve adequately those conflict situations faced by politicians in parliament and lawyers in law courts. In today's liberal, secular and multicultural societies, strict and rigid application of this principle to contemporary legal issues on marriage and the family has become perplexing and problematic. It has become complicated because today's life is complicated. Its essential moral characteristics, namely the pursuit of the good, the avoidance of evil, the witness to the moral truth, the concepts of proportionate reason and harm reduction, as well as the avoidance of scandal, cannot be changed

and consequently remain highly relevant even today. However, the context of their application has changed immensely since today's life has become more demanding, complex and ambiguous. Prudential judgment seems to indicate the justification of the application of this principle in certain situations traditionally considered as grey areas or even morally unacceptable. Despite its limitations which could be surpassed by novel moral insights, this principle definitely remains an important feature of moral reasoning for Catholic politicians and lawyers to take the best possible decisions in conscience for the sake of the common good, both when legislation is discussed in parliament and applied in courtrooms. The principle of cooperation, in all its complexity, limitations and novelty, remains both a guiding principle for politicians and lawyers in discerning today's complexity of marriage-related legislation and at the same time an effective tool to reach prudential judgments in the service of the common good and a "culture of dignity."

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